

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION**

SENTINEL TRUST COMPANY,
Danny N. Bates, Clifton T. Bates,
Howard H. Cochran, Bradley S. Lancaster,
and Gary L. O'Brien

Plaintiffs

Civil Action No.:

v.

3-04-0836

KEVIN F. LAVENDER, Tennessee Commissioner
of Financial Institutions

JUDGE NIXON

Defendant

**PLAINTIFFS' AMENDED COMPLAINT
FOR INJUNCTIVE RELIEF**

Defendant Commissioner not yet having filed an answer to the Complaint, Plaintiff's amend their complaint as authorized by Rule 15(a), F.R.C.P., by incorporating herein all paragraphs and prayers thereof, amending it only by inserting the following paragraph between Paragraphs 23 and 24 thereof:

23a. As established by the Complaint, it was served upon the Attorney-General, Defendant Commissioner's attorney, before the complaint was actually filed. As a consequence of such pre-filing service and subsequent service of the Complaint and Summons upon Defendant, the said Defendant is charged with actual knowledge of the truth of each of the allegations in the complaint that is, in fact, irrefutable. It follows from these facts and from the additional facts alleged below

that—

(i) Anyone having competent knowledge of the banking business should instantly recognize the effects of the compounding factor as alleged herein (*supra*, ¶¶ 12, 17), and should have been aware, from a competent examination of Sentinel's books, that Sentinel each month credited each bond-fund account with the interest earned on the basis of the proper interest rate and the exact amount of cash owned by such fund. Yet Plaintiffs must recognize the possibility that the Defendant Commissioner and his staff may have lacked such basic knowledge and failed to make the obvious factual determinations as to the true state of Plaintiff Corporation's accounts. They failed to discern the obvious fact that Sentinel's "accounts receivable" from defaulted bond issues within its fiduciary accounting vastly overstated the amount of money Sentinel had advanced, in its fiduciary capacity, on the security of the assets subject to bond liens within each defaulted issue. Such lack of knowledge and failure analytically to examine Sentinel's accounts is the least reprehensible explanation for actions of Defendant and his staff treating as a liability a body of claims which constituted an asset of Sentinel in its fiduciary capacity.

(ii) However, from and after service of the Complaint, Defendant Commissioner has been charged with certain knowledge that the maximum amount of possible eventual cash shortage represented by the approximately \$7.25 million "accounts receivable" was and remains \$3,167,178.00 from and after March 31, 2004, even if no part of the "accounts receivable" shall ever be collected, and that a large portion of this deficiency is and has been covered by fees charged on Sentinel's books in amounts totaling about \$2.6 million but for which no checks to Sentinel have been printed. Simple honesty—and the integrity demanded of every public official—imposed upon Defendant Commissioner *personally* the duty to confirm these facts by requiring a comparison of the month-to-month differences in balances of each bond issue's cash account, and the negative balances of each overdrawn defaulted bond issue, and by requiring examination of the computer registry of checks awaiting printing. Hence, he is chargeable with knowledge of the falsity of the assumptions upon which he acted, inasmuch as large portions of the accounts receivable should be

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considered collectable because of Sentinel's preferred position as a secured creditor under each bond indenture, even though the precise degree of collectibility cannot be known with certainty.

(iii) Reports made by Defendant Commissioner to the Lewis County Chancery Court prove that the following "accounts receivable" have been collected by his receiver, simply by continuing the collection activities underway under Plaintiffs' direction before seizure:

<u>Bond Issue</u>	<u>Collected</u>	<u>A/R Received Included in Collection</u>
Jefferson Co., AR	1,100,000.00	502,236.60
Lee Co., AL	840,000.00	583,909.98
Tarrant Co., TX	1,620,000.00	871,480.98
Washington Co., MS	159,179.29	159,179.29
Total A/R receipts		2,116,806.85 minimum

Total moneys collected in the foregoing accounts amount to about \$3,719,179.29 in increases in the so-called "pooled fund" account. No reports have been provided to indicate if Sentinel's fee schedules are being properly applied by Defendant's receiver. If they are, substantial increases in fees and monthly overdraft charges would reduce further the current cash liability to trust accounts.

(iv) Such collections go to reduce the \$3,167,178.00 temporary cash "shortage" within the Accounts Receivable to \$1,050,371.15, because the compounding amounts of overdraft fees included in such collections cannot be classified as profits to the bond funds until all expenditures on behalf of all defaulted funds shall have been collected to the fullest extent possible.

(v) With the remaining shortage of \$1,050,371.15, for cash-flow purposes, being more than covered by Sentinel's unpaid fees in excess of \$2.6 million, there remains no basis upon which Defendant Commissioner can honestly insist that there is even an appearance of insolvency in Sentinel's own cash in relation to its ability to meet all obligations as they become due in the ordinary course of business, the test of insolvency under Tennessee law. The insolvency at all times was that of bond issuers, not of Sentinel.

(vi) In addition to such cash in hand, there is currently advertised on the Internet a

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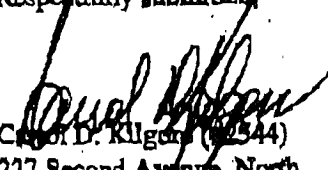
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facility of Lyford Cove Assisted Living Facility at Ft. Pierce, Fla. (recently appraised at \$2.9 million), for sale in Ch. 11 bankruptcy proceedings on November 1, 2004, which represents a probable recovery of another Overdraft Account Receivable (Ft. Pierce, FL) of \$305,299.87, and another such facility is advertised for sale in Chapter 11 proceedings in Hernando Co., Florida (recently appraised at \$2.0 million), representing a further potential recovery of that account's Overdraft Account Receivable of \$739,558.12, each subject to Bankruptcy Court approval. The two of these may totally wipe out the negative receivables account, and should reduce the negative balance to far less than \$1 million. Despite this, it is alleged, upon information and belief, Defendant's receiver offered to sell Defendant's building in Hohenwald, Tennessee, to the County Mayor of Lewis County, Tennessee, for \$1.7 million, in which the County evinced no interest.

(vii) Now, as of October 15, 2004, Defendant has caused said Plaintiff Corporation's building at 29 West Main Street, Hohenwald, Tennessee to be listed for sale with a realtor, a "For Sale" sign having been placed on the property on that date by Shirley Zeitlin Realtors.

(viii) By such actions, when Sentinel is not even arguably insolvent in light of the continuation of its course of asset recoveries in liquidation subsequent to the Defendant Commissioner's unlawful seizure of Plaintiff's business and properties, and the adequacy of its unpaid fees of over \$2.6 million to cover any assumed shortage, said Defendant Commissioner has evinced a determination to totally destroy Sentinel and its business despite the absence of any *bona fide* public interest in, or legal right of, the State of Tennessee in achieving such destruction and such total disregard of Plaintiff's constitutional rights as alleged herein.

Respectfully submitted,


David D. Kilgore (2544)
227 Second Avenue, North
Nashville, Tennessee 37201-1693
(615) 254-8801
Attorney for Plaintiff

DECLARATION

Danny N. Bates, Plaintiff herein, declares, under the penalties of perjury, that the facts stated in the foregoing amended complaint are true except for those alleged upon information and belief, as to which he which he believes to be true on the basis of information received by him from within the county government of Lewis County, Tennessee, and except for allegations of law, which he has been advised and believes to be true.

Date: October 17th, 2004.



Danny N. Bates, Declarant

Certificate of Service

It is hereby certified that on this October 17, 2004, a copy of the foregoing pleading has been fax-transmitted and mailed to the offices of JANET M. KLEINFELTER, ESQ., Senior Counsel, Financial Division, Attorney-General of Tennessee, 425 Fifth Avenue, North, Nashville, Tennessee 37243.

